

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

BRIAN K. ALFORD,
Plaintiff,

vs.

GARY MOHR, et al.,
Defendants.

Case No. 1:15-cv-645
Dlott, J.
Litkovitz, M.J.

ORDER

On November 30, 2016, the Court of Appeals vacated the District Court's decision denying plaintiff leave to proceed *in forma pauperis* and found that plaintiff's allegation of serious physical injury due to the alleged retaliatory denial of treatment for his eye condition met the imminent danger exception of 28 U.S.C. § 1915(g). (Doc. 26). On December 22, 2016, the mandate of the Sixth Circuit issued. (Doc. 28).

In accordance with decision of the Sixth Circuit, plaintiff's motion for leave to proceed *in forma pauperis* (Doc. 3) is hereby **GRANTED**.

In view of the Sixth Circuit's decision, the undersigned hereby **WITHDRAWS** the Report and Recommendation issued on March 2, 2016 (Doc. 20), recommending that this case be dismissed based on plaintiff's failure to pay the full filing fee in this case.

Under section 804(a)(3) of the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915(b)(1), plaintiff must pay an initial partial filing fee of 20 percent of the greater of the average monthly deposits to his prison account or the average monthly balance in his account for the six month period immediately preceding the filing of the complaint. After payment of the initial partial filing fee, plaintiff is further required to make monthly payments of 20 percent of the preceding month's income credited to his prison account until he pays the full amount of the

filing fee. 28 U.S.C. § 1915(b)(2).

Pursuant to 28 U.S.C. § 1915(b)(1), the custodian of plaintiff's inmate trust fund account at the institution where he now resides is directed to calculate, as an initial partial payment, twenty percent (20%) of the greater of:

(a) the average monthly deposits to the inmate trust account; or

(b) the average monthly balance in the inmate trust account, for the six (6) months immediately preceding October 4, 2015. The custodian is **ORDERED** to complete and to submit to the Clerk of Court in Cincinnati, Ohio the attached form showing his calculation of the initial partial filing fee. The custodian is further **ORDERED** to forward from plaintiff's prison account to the Clerk of Court located in Cincinnati, Ohio the initial partial filing fee, as funds become available in plaintiff's account until the initial filing fee is paid. Even if the account is under ten dollars (\$10.00), the custodian must still forward payments to the Clerk of Court to pay the initial filing fee.

After full payment of the initial partial filing fee, the custodian shall forward to the Clerk of Court located in Cincinnati, Ohio monthly payments of twenty percent (20%) of plaintiff's preceding monthly income credited to his prison account, but only when the amount in the account exceeds ten dollars (\$10.00), until the full fee of three hundred and fifty dollars (\$350.00) has been paid to the Clerk of the Court. 28 U.S.C. § 1915(b)(2).

The Clerk of Court is **DIRECTED** to send a copy of this Order to the institutional cashier.

The prisoner's name and case number must be noted on each remittance.


Checks are to be made payable to: **Clerk, U.S. District Court.**

Checks are to be sent to:

**Prisoner Accounts Receivable
103 Potter Stewart United States Courthouse
100 East 5th Street
Cincinnati, Ohio 45202**

IT IS SO ORDERED.

Date: 2/6/17


Karen L. Litkovitz
United States Magistrate Judge

CALCULATION OF INITIAL PARTIAL FILING FEE

Prisoner's name_____

Case no.

Average Monthly Balance \$

(For six month period preceding filing of complaint or notice of appeal)

Average Monthly Deposits \$

(For six month period preceding filing of complaint or notice of appeal)

Initial Partial Filing Fee \$

(the greater of the average monthly deposits or the average monthly balance x .20)

Date

Signature of Authorized Officer